

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Elaine E. Bucklo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 1028	DATE	7/17/2003
CASE TITLE	Smith Provision Co., et al. vs. Viskase Companies, et al.		

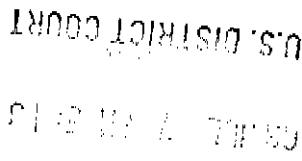

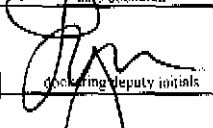
[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Opinion and Order denying defendants' motion to dismiss and their motion for more definite statement.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.		7	Document Number 
<input type="checkbox"/>	No notices required.		number of notices	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		JUL 18 2003	
<input type="checkbox"/>	Notified counsel by telephone.		date docketed	
<input type="checkbox"/>	Docketing to mail notices.			
<input type="checkbox"/>	Mail AO 450 form.		docketing deputy initials	
<input type="checkbox"/>	Copy to judge/magistrate judge.	7/17/2003	date mailed notice	MPJ
MPJ	courtroom deputy's initials	mailing deputy initials		
		Date/time received in central Clerk's Office		

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SMITH PROVISION CO., et al.,

Plaintiffs,

v.

VISKASE COMPANIES INC., et al.,

Defendants.

DOCKETED

JUL 18 2003

No. 01 C 1028

MEMORANDUM OPINION AND ORDER

Defendants are companies that produce artificial casings for processed meat products. Plaintiffs are companies that purchased casings from the defendants. The plaintiffs filed this antitrust class action alleging that the defendants engaged in a price-fixing conspiracy in unreasonable restraint of commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 et seq.. The complaint was initially filed in the District of New Jersey, and has since been transferred to this court and amended. All defendants move to dismiss the amended complaint for failure to state a claim on the ground that the complaint is impermissibly vague and conclusory. Defendants Devro-Teepak, Inc. and Devro PLC (collectively "Devro") move for a more definite statement under Fed. R. Civ. P. 12(e). I deny the motions.

I.

On a motion to dismiss, I accept all well-pleaded facts in the complaint as true. *Thompson v. Illinois Dep't of Prof'l Regulation*, 300 F.3d 750, 753 (7th Cir. 2002). Dismissal is proper only if the

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plaintiff can prove no set of facts to support his claim. *First Ins. Funding Corp. v. Federal Ins. Co.*, 284 F.3d 799, 804 (7th Cir. 2002).

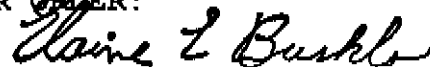
Defendants argue that the complaint is inadequate because it rests on "bald assertions of price-fixing" without providing supporting facts. Yet such assertions put the complaint well within the liberal notice-pleading standard of the federal rules of civil procedure. See *Fed. R. Civ. P. 8* (a complaint shall include "a short and plain statement of the claim showing that the pleader is entitled to relief"). A complaint that complies with the rules "cannot be dismissed on the ground that it is conclusory or fails to allege facts. ... All that need be specified is the bare minimum facts necessary to put the defendant on notice of the claim" so that it may file an answer. *Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002); see also *Bennett v. Schmidt*, 153 F.3d 516, 518 (7th Cir. 1998) (holding that "I was turned down for a job because of my race" is all a plaintiff must say in order to state a claim for discrimination). Likewise, the complaint's allegations that the defendants "agreed to and did fix ... prices" and "agreed to and did refrain from competing among themselves" is sufficient to state a claim for conspiracy to restrain trade in violation of Section 1. See *Gen. Refractories Co. v. Stone Container Corp.*, No. 98 C 3543, 1999 U.S. Dist. LEXIS 238, at *6-7 (N.D. Ill. Jan. 8, 1999) (Manning, J.) (holding that a complaint alleging that the

defendants "agreed to and did artificially raise the price" of a product stated a claim under Section 1). The motion to dismiss is DENIED.

II.

A motion for a more definite statement is appropriate when a complaint "is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." FED. R. CIV. P. 12(e). The complaint alleges that Devro entered into a conspiracy to restrain trade between 1990 and 1996, while the remaining defendants are alleged to have joined the conspiracy in December of 1993. Devro claims that it must know who its alleged co-conspirators were prior to December 1993 in order to respond to the complaint. Yet the original complaint filed by the plaintiffs in the District of New Jersey did not name Devro's co-conspirators, and Devro was apparently able to frame an answer, which it filed. It is disingenuous for Devro to claim that it cannot reasonably be required to respond to the amended complaint in the absence of information that it also lacked at the time it filed its previous answer. See *Von Zuckerstein v. Argonne Nat'l Lab.*, No. 86 C 6304, 1987 U.S. Dist. LEXIS 14086, at *3, n7 (N.D. Ill. Apr. 7, 1987) (Rosemond, J.). The motion for a more definite statement is DENIED.

ENTER ORDER:



Elaine E. Bucklo

United States District Judge

Dated: July 17, 2003